the Commission's rules and policies and that appear to be permitted by other sections contained in the revised Part 22 rules. First, service area boundaries may extend into unserved area in an adjacent market pursuant to a contract or agreement with the neighboring licensee if the market into which the extension reaches is not yet past its five year build-out date.[31] The Commission has specifically authorized such extensions in the past,[32] and they appear to be contemplated by new Section 22.912(a) and (b).[33]

Second, the service area boundaries also may extend into the CGSA of a neighboring market pursuant to a contract SAB extension regardless of whether either market has passed its five year build-out date. This type of extension also has been explicitly recognized in prior Commission orders[34] and would be authorized by new Section 22.912(a) and (b) as well.

The provisions of new Section 22.165(e), however, do not comport with the existing policies or with other revised rules contained in the same order. Indeed, if the Section 22.165(e) constraints are retained, not only will the Part 22 rules be internally inconsistent, but the Commission will have adopted a substantive rule change without

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[31] If the extending licensee has reached its five year build-out date, its cellular geographic service area ("CGSA") must be directly adjacent to the unserved area in the other market into which the SABs extend.

[32] *E.g.*, 47 C.F.R. § 22.903(d)(2) (1993).

[33] New Section 22.912(a), (b), *Part 22 Rewrite Order*, B-75.

[34] *E.g.*, 47 C.F.R. § 22.903(d)(2) (1993).

adequate notice in its *NPRM* in this docket, without any substantial discussion in the comments, and without any discussion in the order adopting the new rule.

In fact, there appears to be no justification for the Commission now to prohibit these two categories of permissive SAB extensions. Retention of the newly adopted rule in its current version would unduly restrict the ability of cellular carriers to provide service to the public and to meet the needs of their customers. Modification of the rule to retain current practices in fact would serve the public interest, as already found by the Commission in the unserved area proceedings that led to the adoption of the current codification of the SAB extension policies. To achieve this result, McCaw suggests that Section 22.165(e) be revised to read as follows (added language is underlined):

> During the five year build-out period, the service area boundaries of the additional transmitters, as calculated by the method set forth in § 22.911(a) of this part, must remain within the market, except that the service area boundaries may extend beyond the market boundary into area that is part of the CGSA or is already encompassed by the service area boundaries of previously authorized facilities or as permitted by § 22.912 of this part. After the five year build-out period, the service area boundaries of the additional transmitters, as calculated by the method set forth in § 22.911(a) of this part, must remain within the CGSA except as permitted by § 22.912 of this part.

III. OPERATIONAL AND TECHNICAL REQUIREMENTS

A. The Commission Should Exempt Air-Ground Radiotelephone Service Facilities from Station Identification Requirements

As adopted, new Section 22.313 provides that the licensee of certain stations in the Public Mobile Service must ensure that the transmissions of that station are identified at the end of each transmission or series of transmissions.[35] The previous rule did not require stations in the 800 MHz air-ground service to identify the station. In addition, pursuant to the Third Report and Order in GN Docket No. 93-252, effective January 2, 1995,[36] the FCC has amended Section 22.313 to require that licensees in the public mobile service must transmit the station identification each hour within five minutes of the hour, or upon completion of the first transmission after the hour.[37]

The Commission currently exempts, and under the new rule will continue to exempt, general aviation ground stations in the air-ground service, stations in the cellular radiotelephone service, and certain rural subscriber stations from compliance with the station identification rule.[38] Claircom requests that the Commission expand

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[35] New Section 22.313(a), (b), *Part 22 Rewrite Order*, B-27.

[36] Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services, FCC 94-212 (Sept. 23, 1994). A summary of this decision was published at 59 Fed. Reg. 59945 (Nov. 21, 1994).

[37] *Id.*, ¶ 218.

[38] New Section 22.313(a), *Part 22 Rewrite Order*, B-27.

the exceptions to the station identification requirement to exclude commercial aviation ground stations and airborne transmission units in the 800 MHz air-ground radiotelephone service. The imposition of a station identification requirement on commercial aviation ground stations or airborne units in the 800 MHz air-ground service would be prohibitively expensive and technically inefficient. As an initial matter, all air-ground licensees share a fixed number of channels and use frequencies as they become available (*i.e.*, the air-ground network employs a "dynamic" changing frequency system whereby air-ground licensees use channels as they are available; if none are available, the air-ground caller must wait until one becomes available). Imposing a station identification requirement on air-ground licensees needlessly uses valuable spectrum for the station identification, thereby reducing trunking efficiencies, negatively impacting channel availability, and resulting in longer waiting times for airline passengers to make air-ground calls. Such a requirement thus impairs service to the public, especially in high capacity areas where the three operational air-ground carriers are already pressed for spectrum. Furthermore, station identifications in the air-ground service will not be identifiable under some of the modulation schemes likely to be used by air-ground service providers.

Moreover, the requirement to make a station identification every hour also is inefficient. It appears that such a requirement applies to all air-ground transmitters (including those used on pilot channels as well as voice channels), thereby necessitating station identification for transmitters not in use during a particular hour. Those

transmitters will have to be turned on just to make the station identification. This is an inefficient use of the very limited air-ground spectrum.

Consequently, the Commission should broaden the existing exceptions to the station identification requirement to include air-ground commercial aviation ground stations and airborne units.

B. In-building Radiation Systems Using Circular Polarization Should Be Clearly Authorized

The statements contained in Appendix A to the *Part 22 Rewrite Order* and various rules set forth in the revised Part 22 create a confused picture for licensees and applicants seeking to determine the permissible use of in-building radiation systems. While the Commission has indicated that it will conduct further proceedings on possible additional technical specifications for such systems,[39] the rules clearly authorize the use of in-building radiation systems but then impose restrictions inconsistent with the technical characteristics of many existing such facilities. The Commission should modify its rules and policies as necessary to ensure that licensees may make effective use of in-building radiation systems in meeting the needs of their customers.

Initially, new Section 22.99 defines "in-building radiation systems" as "[s]upplementary systems comprising low power transmitters, receivers, indoor antennas and/or leaky coaxial cable radiators, designed to improve service reliability

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[39] *Part 22 Rewrite Order*, A-26.

inside buildings or structures located within the services areas of stations in the Public Mobile Services."[40] New Section 22.383 specifically authorizes licensees to install and operate in-building radiation systems without prior Commission approval or notification, provided that the locations of the in-building radiation systems are within the protected service area of the licensee's authorized transmitter(s) on the same channel or channel block.[41]

Consistent with the Part 22 definition of in-building radiation systems, many Part 22 operators operate such facilities with leaky cable. Leaky cable currently uses circular polarization. New Section 22.367, however, requires most Part 22 facilities to employ vertical polarization.[42] This rule also provides that the FCC may authorize the use of circular polarization, if communications efficiency would be improved and/or interference reduced.[43] New Section 22.367 thus appears to prohibit the use of, at minimum, in-building radiation systems that employ leaky cable -- which use otherwise is specifically permitted by new Section 22.383. Alternatively, new Section 22.367 may require a licensee seeking to deploy an in-building radiation system with circular polarization to obtain prior Commission approval (assuming the operator can make the showing prescribed by new Section 22.367(c)).

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[40] New Section 22.99, *Part 22 Rewrite Order*, B-11.

[41] New Section 22.383, *Part 22 Rewrite Order*, B-35.

[42] New Section 22.367, *Part 22 Rewrite Order*, B-32.

[43] *Id.*

To resolve this situation, the Commission should, in the Part 22 rules, specifically authorize in-building radiation systems to employ horizontal, vertical, or circular polarization. As the Commission itself has recognized, interference with other radio services is not an issue with in-building radiation systems. Indeed, as noted above, carriers already use leaky cable, which uses circular polarization. To the best of McCaw's knowledge, this use of circular polarization has not presented any problems in the context of the vertical polarization otherwise generally employed in Part 22 radio services. The Commission likewise should reaffirm that the use of leaky cable in in-building radiation systems is permitted without seeking specific Commission authorization in each case. Grant of this relief will facilitate the ability of carriers to respond promptly to the needs of certain categories of customers.

The clarification sought in this petition can be achieved by adding the following language at the end of new Section 22.383: Notwithstanding the provisions of § 22.367 of this part, in-building radiation systems may employ vertical, horizontal, or circular polarization.

C. The Effect on Public Mobile Service Licensees of the Deletion of Old Section 22.119 Should Be Clarified

The Commission adopted its 1994 proposal[44] to delete current Section 22.119 of the Rules, an action supported by McCaw. In discussing this action, the Commission stated that, "[e]limination of Section 22.119 will remove the existing rule requiring separate dedicated transmitters for private carrier paging ("PCP") and RCC paging services."[45] The *Part 22 Rewrite Order* did not address in any depth the concern raised by McCaw and other commenters that "Section 22.119 might be construed so as to impede the introduction of valuable data transmission capabilities and information services by Part 22 licensees," and thus the deletion of the rule "would dispel any doubt that Part 22 licensees may offer whatever innovative, value-added services the marketplace demands."[46]

The Commission did note, however, that deletion of the rule "does not mean that channels available under Part 22 may be used to provide a non-common carrier service."[47] This statement could be interpreted to mean that a Part 22 licensee may not provide enhanced or other information services by means of its communications

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[44] Amendment of the Commission's Rules To Delete Section 22.119 and Permit the Concurrent Use of Transmitters in Common Carrier and Non-Common Carrier Services, 9 FCC Rcd 2578 (1994) (Notice of Proposed Rulemaking and Order).

[45] *Part 22 Rewrite Order*, ¶ 68.

[46] Comments of McCaw Cellular Communications, Inc., CC Docket No. 94-46, at 2 (filed July 11, 1994).

[47] *Part 22 Rewrite Order*, A-26.

channels. This dilemma is further compounded by the requirement in new Section 22.901 that "[l]icensees of cellular systems may use alternative cellular technologies and/or provide auxiliary *common carrier* services . . . ."[48] This rule section also appears to exclude enhanced and other information services.

In order to ensure that Part 22 operators are able to meet customer needs effectively and compete successfully in the telecommunications marketplace, the Commission should make clear, either by rule or in an interpretative statement, that Part 22 licensees may offer enhanced services over their authorized radio channels. Such action will be consistent with the public interest and help to promote competition in wireless services, a goal actively being pursued by the Commission. Indeed, adoption of the interpretation sought in this petition will promote parity between Part 22 services and personal communications services under Part 24, a goal mandated both by Congress and the Commission.

D. The Commission Should Permit Part 22 Licensees To Share Transmitters

In the *Part 22 Rewrite Order*, the Commission refrained from adopting a proposed rule that would have prohibited the use of multichannel transmitters.[49] As discussed above, the Commission also deleted former Section 22.119 of its rules. With

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[48] New Section 22.901(d), *Part 22 Rewrite Order*, B-72.

[49] *Part 22 Rewrite Order*, ¶ 44.

respect to both actions, the Commission was convinced that the public interest would be served by allowing Part 22 transmitters to be used for a variety of purposes. Among other benefits, carriers using Part 22 transmitters in this manner are able to introduce new service offerings, promote the sharing of channels under time-sharing agreements, reduce infrastructure costs, and encourage a more rapid deployment of paging services in general, all to the benefit of consumers.[50]

Despite the acknowledged benefits to be gained by deleting, or refraining from adopting, rules that would tend to discourage the rapid deployment of paging services at lower cost to subscribers, the Commission announced for the first time that it was not in the public interest for different licensees to share the same transmitter:

> Finally, we do not believe that it is in the public interest to allow two different licensees to share the same transmitter. We are concerned that the shared use of the same transmitter by two different licensees may raise questions regarding the control and responsibility for the transmitter. We are also concerned about the broader service disruptions that outages of shared transmitters would cause.[51]

McCaw submits that the Commission should reconsider its announced policy and specifically allow different licensees to share transmitters in view of the fact that such sharing in fact benefits the public and that concerns about licensee responsibility and service disruptions are unfounded.

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[50] *Id.*, ¶¶ 44, 68-71.

[51] *Id.*, ¶ 71.

At the outset, the Commission should note that the sharing of transmitters by Part 22 licensees is a widespread practice.[52] This is due to the fact that: (1) Part 22 does not specifically prohibit the practice,[53] and (2) Part 22 licensees are able to provide service to subscribers more quickly and at lower cost because they share certain portions of a paging system's infrastructure. In this regard, the very same benefits that convinced the Commission to allow the use of multichannel transmitters and to allow Part 22 transmitters to be used for non-common carrier purposes are present here. The only difference is that in this situation there may be two licensees sharing common transmitting equipment.

The Commission's concern about abdication of control and responsibility for transmitters is not sound from a technical standpoint. In the typical transmitter sharing system, each licensee has its own paging terminal that transmits data packages to the base transmitter for broadcast to subscribers. The base transmitter accepts data packets from the terminals on a first-come, first-served basis and then transmits the pages on a first-come, first-served basis. Because each licensee controls its own terminal and the base transmitter in effect operates as a slave to the paging terminal, each licensee maintains control over the most critical aspect of its paging operations.

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[52] Indeed, should the Commission not grant the reconsideration requested in this petition, McCaw urges the Commission to grandfather all existing joint licensing of transmitters.

[53] Neither the "old" Part 22 rules nor the new Part 22 rules adopted in this proceeding expressly prohibit the practice of licensees sharing transmitters.

With regard to the concern of licensee control over the transmitter, it is common in today's paging market for licensees to subcontract maintenance of transmitters to third parties, while maintaining ultimate control and responsibility for their stations. The fact that two licensees may share a transmitter has no impact on that practice.

Moreover, because the Commission quite properly recognizes the very competitive nature of the paging business, which ". . . encourages paging carriers to provide high quality service or risk losing customers to other carriers,"[54] licensees who share transmitters have every incentive to make sure transmitters are maintained in peak condition. Whether a transmitter is used by a single licensee or multiple licensees, a failure by either carrier to make sure that a transmitter outage is repaired as quickly as possible will result in a degradation of service. Disgruntled subscribers will then take service from any number of other paging carriers who operate in the marketplace.[55]

Because sharing of transmitters by licensees provides important benefits to subscribers without resulting in an abdication of control over a licensee's facilities, McCaw submits that the Commission should expressly state that joint licensee use of a common transmitter is not contrary to Commission policy.

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[54] *Part 22 Rewrite Order*, ¶ 69.

[55] In eliminating Section 22.119 of its rules, the Commission noted that the average paging carrier competes against at least five other carriers and as many as 19 other carriers. *Part 22 Rewrite Order*, ¶ 69.

IV. PAGING AND RADIOTELEPHONE SERVICE

A. The Commission Should Revise New Section 22.529(a)(2) To Specify a Definite Area in Which Pending Applications and Granted Facilities Are To Be Identified

New Section 22.529(a)(2), taken together with new Section 22.115(c), requires applicants in the paging and radiotelephone service to include in their applications "[t]he call sign(s) of other facilities in the same area that are ultimately controlled by the real party in interest to the application."[56] These two new rule sections replace former Section 22.15(i)(2), which required applicants for PMS facilities to provide a list of pending applications and granted facilities located within 40 miles of the transmitter being proposed.[57] McCaw submits the Commission should amend Section 22.529(a)(2) by substituting "within 64.4 kilometers (40 miles)" for the phrase "in the same area." Use of a fixed mileage distance in Section 22.529(a)(2) rather than the more ambiguous term "in the same area" will simplify the process of preparing PMS applications.

The phrase "in the same area" is not specifically defined in Section 22.529. The only place in which a term comparable to "in the same area" is found is in

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[56] New Section 22.529(a)(2), *Part 22 Rewrite Order*, B-28; new Section 22.115(c), *Part 22 Rewrite Order*, B-15.

[57] 47 C.F.R. § 22.15(i)(2) (1993).

Sections 22.539 and 22.569 relating to additional channel policies.[58] In those rule sections, "in the same geographic area" is defined as either: (a) a transmitter within the service area contour of another facility; (b) a transmitter whose service area contour constitutes 50 percent or more of the service area of either of two transmitters; or (c) for 931 MHz facilities, transmitters located less than 64.4 kilometers (40 miles) from another 931 MHz transmitter or transmitters less than 64.4 (40 miles) kilometers from a low VHF channel or high VHF channel. Except when dealing with 931 MHz facilities, applicants for PMS facilities will have to calculate the distance of their proposed service area and then determine the individual call signs located within that area.

If the Commission reconsiders Section 22.529(a)(2) specifically to require the disclosure of call signs located within a fixed distance, such as 64.4 kilometers (40 miles), from a proposed facility, the effort required to comply with Section 22.529 will be reduced. Applicants will not have to conduct call sign searches for an almost infinite number of "areas." The uniformity provided by such a change will reduce the applicant's burden without decreasing the amount of information the Commission needs in order to process applications.

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[58] New Section 22.539, *Part 22 Rewrite Order*, B-41 - B-42; new Section 22.569, *Part 22 Rewrite Order*, B-46.

In addition, it should be clarified that paging carriers need only report the call sign of other related paging facilities. As it reads now, the rule appears to require the listing of call signs of all other Part 22 facilities.

V. AIR-GROUND RADIOTELEPHONE SERVICE

A. The Geographical Channel Block Layout Should Be Revised

New Section 22.859 designates the geographical channel block layout for ground stations in the commercial aviation air-ground radiotelephone service.[59] Under that rule, ground stations must be located within one mile of the locations specified in the section. The existing operational air-ground licensees have filed a petition for rulemaking,[60] and three supplements thereto (collectively, FCC Docket No. RM-8379),[61] requesting that the Commission amend the geographical coordinates of ground station locations set forth in Section 22.859. The petition has been pending at the Commission for over one year, but there has been no action on it to date.

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[59] New Section 22.859, *Part 22 Rewrite Order*, B-66 - B-70.

[60] The petition, filed on July 22, 1993, by the air-ground licensees, requested that the Commission amend the geographical coordinates for ground stations in Kenner, Louisiana; Nashville, Tennessee; Bedford, Texas; Kansas City, Missouri; San Jose, California; Cordova, Alaska; and Sitka, Alaska.

[61] The first supplement, filed on October 21, 1993, requested the Commission to change the coordinates for ground stations in Ketchikan and Yakutat, Alaska. The second supplement, filed on December 22, 1993, requested a change of coordinates for ground stations in Austin, Texas, and a modification of the channel block for Yakutat, Alaska. The third supplement, filed on July 19, 1994, requested a change of coordinates for ground stations in Pataskala, Ohio.

Claircom requests that the Commission revise Section 22.859 to reflect the new ground station reference coordinates requested in the pending rulemaking proceeding.

B. The Commission Should Reinstate the Previous Rule for the Emission Mask for Air-Ground Transmissions

New Section 22.861(a) pertains to emission mask requirements for commercial aviation air-ground systems and mandates that the power of any emission in each of the adjacent channels must be at least 30 decibels below the power of the *total* emission.[62] In addition, the rule provides that the power of any emission in any of the channels other than the one being used and the adjacent channels must be at least 50 decibels below the power of the total emission.[63]

Claircom requests that the Commission reconsider Section 22.861(a) and reinstate the previous rule governing emission masks for air-ground transmissions (existing Section 22.1111(a)[64]), which provided that the power of any emission in any of the channels other than the one being used and the adjacent channels must be at least 50 decibels *below the peak envelope power of the main emission.* Section 22.861(a) severely impacts air-ground carriers such as Claircom because all of the equipment for Claircom's nationwide air-ground system has been designed, manufactured, and type accepted according to the emission limit specifications set forth in the Commission's

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[62] New Section 22.861(a), *Part 22 Rewrite Order*, B-70.

[63] *Id.*

[64] 47 C.F.R. § 22.1111(a) (1993).

previous rule. To date, Claircom has deployed and placed in service over 135 ground stations throughout the United States and Canada, and over 650 airborne mobile stations, all of which were subject to the emission limits under the previous rule.

As an initial matter, the new rule changes the reference for out of channel energy from peak envelope power of the main emission to average power of the total emission. Claircom's air-ground equipment uses 8PSK modulation in the traffic channels; the peak to average power radio for an 8PSK modulated carrier is approximately 4.5 decibels. The new rule, in effect, requires the out of channel performance to be approximately 4.5 decibels better than the equipment's design under the previous rule.

Therefore, if implemented, Section 22.861(a) would cost Claircom millions of dollars because it would require Claircom to design and manufacture new equipment, recertify that new equipment through the Commission and the Canadian government, establish compliance with the stringent requirements of the Federal Aviation Administration, retrofit the equipment in the approximately 135 ground stations in the United States and Canada and some 650 airborne mobile terminals, and then possibly be forced to lease and construct new ground stations if the new equipment is not compatible in existing facilities. For the ground station equipment, it is anticipated that a design to meet the new requirement will require physically larger transmit power amplifiers and a larger combiner network. As a result, additional space must be negotiated at existing sites, or in some cases the entire station will have to be relocated.

For the airborne mobile stations, the new rule will require high-powered transmitter replacements that will be larger and heavier, and will project more heat than the current airborne stations. The increase in size, weight, and heat projection adversely affects use of the airborne stations on an airplane, where such factors are critically monitored and strictly limited. It is not clear that the re-designed airborne stations would be compatible with use on commercial airplanes.

Consequently, Claircom requests that the Commission reconsider new Section 22.861(a) and retain the emission limits in its former rule. Alternatively, if the Commission decides against that approach, Claircom requests that the Commission grandfather all air-ground equipment that was designed and manufactured prior to January 1, 1995, the effective date of the new Part 22 rules. It is unduly burdensome and practically impossible to replace the equipment in Claircom's approximately 135 operational ground stations by January 1, 1995, especially given the significant and costly design changes that would be required to be made to the equipment in Claircom's existing fully deployed nationwide air-ground network.

In conjunction with the adoption of a grandfathering provision, McCaw also requests that the Commission establish a transition period for compliance for new air-ground equipment being manufactured. A transition period of five years is the minimum period required to enable Claircom to recoup a substantial portion of its investment in the air-ground equipment manufactured under the specifications in the former emission mask rule. The oldest air-ground equipment installed in Claircom's

network is less than two years old, and it would be inequitable and extraordinarily costly to apply the new requirement to existing Claircom equipment. Thus, in light of the foregoing, Claircom submits that the public interest would be served by adoption of the grandfathering and transitional provisions for existing air-ground equipment.

Alternatively, Claircom requests that the Commission revise Section 22.861(a) to require that the power of any emission in any of the channels other than the one being used and the adjacent channels be at least 46 decibels below the power of the total emission to account for the change in the Commission's measurement method from peak envelope power to power of the total emission.

VI. CELLULAR RADIOTELEPHONE SERVICE

The *Part 22 Rewrite Order* reflects a careful compilation of cellular policies, many of which have informally involved as the service has developed. McCaw wishes to commend the Commission, in particular, for its action with respect to the illicit alteration and emulation of electronic serial numbers ("ESNs").[65] Notwithstanding claims that some ESN emulation may be intended for legitimate purposes, the practices addressed in the *Part 22 Rewrite Order* in fact have many fraudulent uses. It is critical to the continued success of the cellular industry that opportunities for fraudulent activities be minimized to the greatest extent possible.

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[65] *See Part 22 Rewrite Order*, ¶¶ 25-28; new Section 22.919, *Part 22 Rewrite Order*, B-77.

A. New Section 22.901 Should Be Clarified To Ensure That It Does Not Unduly Limit the Ability of Cellular Carriers To Terminate, for Good Reason, Service to Subscribers

Commission policies have long recognized the ability of common carriers to terminate service or refuse to provide service to customers for a number of legitimate reasons. In that context, new Section 22.901 states that "[c]ellular system licensees must provide cellular mobile radiotelephone service upon request to all cellular subscribers in good standing . . . . A cellular system licensee may refuse or terminate service, however, subject to any applicable state or local requirements for timely notification, to any subscriber who operates a cellular telephone in airborne aircraft in violation of § 22.925 or otherwise fails to cooperate with the licensee in exercising operational control over mobile stations pursuant to § 22.927."[66] As now phrased, this rule could be interpreted as limiting the types of circumstances under which a carrier may terminate service to a subscriber to the two rationales set out at the end of the section.

In fact, there are a number of other valid, legitimate reasons for a cellular operator to terminate service, including: suspected fraud by the subscriber; failure to abide by the terms and conditions of the subscriber agreement; failure to pay for service; and use of an emulated phone, among others. The Commission may have intended these factors to be encompassed within the section's reference to "cellular

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[66] New Section 22.9027, *Part 22 Rewrite Order*, B-72.

subscribers in good standing." Nonetheless, the existing version of the rule could form the basis for a subscriber terminated for, e.g., non-payment to argue that the carrier nonetheless must continue to provide service. Clarification of the rule requirements to indicate that termination is permissible for other valid reasons as well would eliminate this opportunity to misuse the Commission's policies. The public interest clearly would be served by this action.

B. New Section 22.929(a)(2) Should Be Deleted

New Section 22.929(a)(2) requires a cellular applicant to include as an exhibit to the applicable form "[t]he call sign(s) of other facilities in the same area that are ultimately controlled by the real party in interest to the application."[67] This provision parallels new Section 22.529(a)(2), which is applied to applications in the paging and radiotelephone service, and both sections appear to be derived from current Section 22.15(i)(2).[68] The existing rule requirement, however, applied only to applications in the Public Land Mobile Service, now the paging and radiotelephone service.

There appears to be no reason to extend this requirement to the cellular service, in light of its licensing scheme, and the rule therefore should be deleted. If the Commission nonetheless retains this subsection, then it is essential that the Commission

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[67] New Section 22.929(a)(2), *Part 22 Rewrite Order*, B-78.

[68] 47 C.F.R. § 22.15(i)(2) (1993).

specify what information is to be provided in response to this requirement.[69] As the subsection now exists, McCaw is uncertain as to what call signs it would have to include to make the necessary showing.

C. New Section 22.936 Should Be Revised To Reflect the Commission's Cellular Renewal Policies

New Section 22.936 addresses dismissal of applications in cellular renewal proceedings.[70] The rule as adopted in fact appears inadvertently to combine the provisions of existing Section 22.943[71] (concerning the dismissal of applications in cellular renewal proceedings) and Section 22.944[72] (concerning dismissal of petitions to deny in cellular renewal proceedings). This combination of both rule sections is reflected in the provision about payment of legitimate and prudent expenses, as well as in references to "petitioner" instead of "applicant."

The Commission's existing policies concerning the dismissal of petitions to deny in cellular renewal proceedings appear to be encompassed within new Section 22.129,[73] which applies comparable "green mail" policies to petitions to deny filed with respect to any Part 22 application. Section 22.936 should be revised to retain the

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[69] *See* discussion at pages 35-37, *supra.*

[70] New Section 22.936, *Part 22 Rewrite Order, B-79 - B-80.*

[71] 47 C.F.R. § 22.943 (1993).

[72] 47 C.F.R. § 22.944 (1993).

[73] New Section 22.129, *Part 22 Rewrite Order*, B-19.

existing Commission policy for dismissal of applications in cellular renewal proceedings, specifically including the provision that no money may be paid to such an applicant.

D. The SIU Map Filing Requirements Should Be Clarified

New Section 22.947(c) sets forth the filing requirements for system in formation updates ("SIUs"), which are to be filed with the Commission 60 days before the end of a carrier's five year build-out period.[74] The Commission rejected the proposal put forth by U S West that the SIUs be submitted on the date of expiration of the five year build-out period instead of 60 days prior to that date, on the basis that the U S West proposal was considered to be outside the scope of the proceeding and that there is no public interest reason supporting a change in the SIU due dates.[75]

Initially, McCaw disagrees with the Commission concerning the build-out activity that a cellular licensee may pursue during the last 60 days of its build-out period. McCaw's cellular affiliates often file one or more applications on the even of the five year build-out date. This activity typically occurs because actual cellular service coverage may differ dramatically from that predicted by means of the SAB formula prescribed by the Commission's rules. For much of the build-out period, the carrier is concerned about the real world coverage in its market and whether

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[74] New Section 22.947(c), *Part 22 Rewrite Order*, B-84.

[75] *Part 22 Rewrite Order*, ¶ 91.

subscribers are actually receiving quality service. As the end of the build-out period approaches, however, the carrier want to take steps to ensure that its real world coverage area in fact is protected under the Commission's policies.

It is McCaw's experience that SIU maps filed 60 days before the end of the build-out period usually are superseded as the carrier finalizes and implements the final elements of its protection plan. Reliance on these maps and a failure to recognize that coverage may change and subsequent maps may be filed has led to the submission of defective unserved area applications based on incorrect data from the earlier filed maps.

At the very least, the Commission should clarify that a carrier should show all existing and proposed coverage as known at the 60-day mark, and then file additional SIU maps if changes to the existing and planned coverage occur before the end of the five year build-out period. McCaw, however, continues to support U S West's proposal, believing an SIU filing date at the end of the build-out period would conserve the resources of the Commission, licensees, and potential unserved area applicants; would not delay the Commission's processes for the preparation and filing of unserved area applications; and would provide the most accurate information about the configuration of the cellular system at the conclusion of the build-out period.

VII. CONCLUSION

McCaw commends the Commission on the overall success of the substantial effort reflected in its rewrite of Part 22. At the same time, McCaw urges the Commission to clarify certain rule sections and policies and to revise other regulations and policies consistent with the demonstration made above. Grant of the relief requested in this petition will lead to a better final product, facilitate licensee and applicant compliance with Commission requirements, result in improved services for subscribers, and enhance competition in the wireless and mobile services marketplace -- all of which will further the public interest.

Respectfully submitted,

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